## **EXHIBIT A**

#### Marciano v. American Red Cross

CharCretia V. DiBartolo to: barry

Bcc: Andrea M. Pavlas

04/27/2015 01:00 PM

#### Dear Barry:

Thank you for speaking with me this morning regarding the above-referenced matter. As discussed, I represent the American Red Cross (ARC) and Sedgwick Claims Management Services. This email will confirm that you have agreed on behalf of your client to an extension of time in which the ARC may answer or otherwise respond to the complaint up to and including May 29, 2015. I understand that Sedgwick has not yet been served. Please advise if that is not the case. Thank you for your courtesy. I will get back to you shortly regarding our settlement discussions.

CharCretia

#### CharCretia V. DiBartolo

28 State Street 24th Floor Boston, MA 02109-5709 Tel: 617-213-7005 | Fax: 617-213-7001

321 South Main Street Suite 301 Providence, RI 02903 Tel: 401-751-0842 | Fax: 401-751-0072 E-mail: cdibartolo@hinshawlaw.com



A CULBERTSON LLP

Building on the Barger Tradition

## EXHIBIT B

AFFILIATED OFFICES THROUGHOUT NEW ENGLAND †

March 31, 2015

Hand Delivered

Clerk of the Court, Civil Peabody District Court One Lowell Street Peabody, MA 01960 1586CV 0102 8

Re:

Susan Marciano vs. American Red Cross and Sedgwick Claims Management Services, Inc. Peabody District Court , C.A. No.:

Dear Sir/Madam:

Enclosed for filling in the above-referenced action are the following:

- Plaintiff's Complaint and Jury Trial Demand;
- 2. Civil Action Cover Sheet:
- 3. Counsel Certification; and
- Check in the amount of \$205.00 for filing fee and two Summonses.

Please conform the additional copy of the Complaint with the Court's date stamp, assigned case number and two Summonses.

Thank you for your kind assistance.

Very truly yours,

THE LAW-OFFICES OF BARRY FEINSTEIN & AFFILIATES, P.C.

Barry A. Feinstein, Esquire

tms encs.

PROTECTING THE RIGHTS OF INJURED PERSONS

**MAIN OFFICE** 

100 LOWELL STREET • P.O. BOX 6049 • PEABODY, MASSACHUSETTS 01961-6049 • (978) 531-7450 • FAX (978) 531-7123

\*Licensed in Massachusetts only \*\*Affiliated Offices Throughout Massachusetts † Affiliated Partner in ME, NH, CT and RI

#### **COMMONWEALTH OF MASSACHUSETTS**

ESSEX, SS

PEABODY DISTRICT COURT C.A. NO.:

SUSAN MARCIANO

**Plaintiffs** 

V.

AMERICAN RED CROSS, JOHN DOE and SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. Defendants

#### COMPLAINT

Now comes the plaintiff, Susan Marciano in the above captioned matter and puts forth their allegations against the above captioned defendants as follows.

#### **PARTIES**

- The plaintiff, Susan Marciano is an adult individual residing in Beverly, Essex County, Massachusetts.
- The defendant, American Red Cross which at all times relevant to this lawsuit, and specifically owned, possessed, and/or controlled the premises located at 99 Rosewood Drive, Danvers, Massachusetts. (hereinafter "the Premises").
- John Doe and Person Unknown is an individual or individual yet to be identified who at all times relevant to this lawsuit, was an employee working for the defendant, American Red Cross.

#### **COUNT 1 - NEGLIGENCE- AMERICAN RED CROSS**

- 4. On April 18, 2014, the plaintiff, Susan Marciano was on the premises for the purpose of donating platelets. During the course of the donation, the machine was collecting the platelets kept beeping and the technician kept moving the needle around her arm. After many attempts to get the platelets, the technician stopped the machine and took the needle out. As a result, the plaintiff, Susan Marciano, developed painful swelling to her right upper arm.
- 5. The defendant, American Red Cross, by its negligence, breached a standard of care to their donators.
- As a direct and proximate result of the negligence of the defendant, Susan Marciano, was seriously injured, suffered great pain of body and mind, and incurred significant medical expenses and a diminished quality of life.

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(976) 531-7450

WHEREFORE, the plaintiff, Susan Marciano demands judgment against the defendant, American Red Cross, along with attorneys fees, costs and interest.

#### COUNT II - NEGLIGENCE - JOHN DOE AND PERSON UNKNOWN

- 7. Plaintiff, Susan Marciano repeats, realleges, and incorporates by reference as if fully set forth herein Paragraphs 1 through of this 7 Complaint.
- On April 18, 2014, the plaintiff, Susan Marciano was caused to suffer an injury.
- The defendant, John Doe and Person Unknown, by its negligence, breached a duty owed to the plaintiff and the minor plaintiff.

WHEREFORE, the plaintiff demands judgment against the defendants, John Doe and Person Unknown, along with attorneys fees, costs and interest.

#### **COUNT III**

- The Plaintiff, Susan Marciano reiterates and reavers paragraph numbers 1 throughherein as if expressly set forth in their entirety.
- 11. The Defendant, Sedgwick Claims Management Services, Inc. is a business entity as defined by Massachusetts General Laws Chapter 93A.
- 12. On February 12, 2015, the Plaintiff, Susan Marciano forwarded to the Defendant, Sedgwick Claims Management Services, Inc. a demand letter pursuant to Massachusetts General Laws Chapter 93A and 176D (See exhibits attached hereto.)
- 13. The Defendant, Sedgwick Claims Management Services, Inc's failure to adequately and properly respond with a tender of a reasonable settlement offer constitutes bad faith and unfair and deceptive settlement practice.

WHEREFORE, the Plaintiff, Susan Marciano demands judgment against the Defendant, Sedgwick Claims Management Services, Inc. in a sum to make the Plaintiff, Susan Marciano substantially whole including double or treble damages and attorney's fees in accordance to Massachusetts General Laws chapter 93A, plus interest and costs.

HE LAW OFFICES OF BARRY FEINSTEIN & AFFILIATES, P.C. 800 LOWELL STREET P.O. BOX 6649 \$BODY, MA 01961-6049

#### PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL ISSUES.

The Plaintiff, Susan Marciano

By her Attorney,

Barry A. Feinstein BBO # 161620

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(976) 531-7450



AFFILIATED OFFICES THROUGHOUT NEW ENGLAND \t

February 12, 2015

Sedgwick Claims Management Services, Inc. P.O. Box 14491 Lexington, KY 40512

Attention: Jill Sullivan, Claims Examiner

RE:

My Client:

Susan Marciano

Your Insured:

American Red Cross

Date of Loss:

April 18, 2014

Your File No .:

30142207028-0001

Dear Ms. Sullivan:

Enclosed please find the following with respect to the above-mentioned matter:

- Records from Dr. Maximillian Soong of Lahey Clinic dated June 13, 2014 through June 23, 2014;
- MRI Upper Extremity Joint without Contrast-Right Report from Lahey Clinic dated June 18, 2014;
- 3. Records from Dr. Paul Smiley of Lahey Clinic dated July 14, 2014;
- 4. Records from Dr. Anu Diddee of Lahey Clinic dated December 4, 2014; (to follow)
- 5. EMG/NGS Report from Dr. Michael Vytopil of Lahey Clinic dated January 6, 2015;
- Records from Dr. Douglas Peterson of North Shore Center for Orthopedic Surgery dated August 15, 2014 through September 19, 2014;
- MRI Right Elbow without Contrast Report from Beverly Hospital dated August 22, 2014;
- 8. Bills from Lahey Clinic in the amount of \$5,127.00;
- 9. Bills from Dr. Douglas Peterson in the amount of \$525.00;
- 10. Bills from Beverly Hospital in the amount of \$2,081.00;

#### PROTECTING THE RIGHTS OF INJURED PERSONS

#### MAIN OFFICE

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Sedgwick Claims Management Services, Inc. February 12, 2015 Page 2.

11. Bills from Beverly Radiology Associates, Inc. in the amount of \$217.00.

To review the circumstances of the above-mentioned matter:

On April 18, 2014, Susan Marciano was at the American Red Cross, Rosewood Drive, Danvers, MA for the purpose of donating platelets. During the course of the donation, the machine that was collecting the platelets kept beeping and the technician kept moving the needle around her right arm. After many attempts to get the platelets, the technician decided to stop the donation and take the needle out. Ms. Marciano developed *painful* swelling to her right upper arm and pain throughout the arm as a result of the improper collection of platelets.

It should be noted that Ms. Marciano had a right lateral epicondyle debridement, tenotomy, and repair on January 24, 2014 performed by Dr. Maximillian Scong of Lahey Clinic.

I draw your attention to the office notes of Dr. Maximillian Soong of Lahey Clinic, dated June 13, 2014, wherein he states under interval history, "The patient returns at 4.5 months postoperatively. She reports that she has done very well status right elbow debridement. She now presents with a new concern regarding her right shoulder. She reports that she was donating platelets recently, after which she noted significant acute swelling of the upper arm, proximal to the intravenous access site. She since had residual pain and weakness of the shoulder."

I draw your attention to the office notes of Dr. Douglas Peterson dated August 15, 2014, wherein he states under HX, "She has no significant problems to the elbow at this time. She has however had increased pain over the anterolateral aspect of the distal humerus since a platelet donation she made on 4-18-14., where it sounds like she had extravasation of fluid into the soft tissues in the anterior lateral aspect of her elbow where she had significant mass and pain to the anterior elbow. Once she got home she treated it conservatively and has had increased pain in that area since. She has had an MRI performed to her right shoulder, but not to her elbow since the injury."

I draw your attention to the office notes of Dr. Douglas Peterson dated September 19, 2014, wherein he states under Plan, "She continues to report some numbress to the dorsum of her forearm and into her hand. Therefore there may be a nerve impingement involved with this. Therefore, if she continues to have symptoms in this area I would recommend a Nerve Conduction Test to R/O some sort of nerve impingement."

Ms. Marciano has incurred approximately \$7,950.00 in medical expenses to date.

Ms. Marciano is 47 years old. According to the U.S. Life Charts, she is expected to live approximately another thirty-five (35) years. If we were to assign a modest amount of \$5,000.00 per year for disability over the next 35 years that would amount to \$175,000.00. Surely, a jury would not consider Ms. Marciano's disability as being worth less than \$100.00 a week.

Sedgwick Claims Management Services, Inc. February 12, 2015 Page 3.

Considering the painful injuries sustained, the resultant disability periods, and the medical charges incurred to date, claim is hereby made in the amount of \$150,000.00 as full and final settlement of this claim.

I hereby make formal demand on Sedgwick Claims Management Services, Inc. for relief of damages for my client, Susan Marciano, pursuant to the Massachusetts General Laws 93A and 176D. You are further notified that Massachusetts General Laws Chapter 93A provides for multiple damages, attorney's fees and the cost of litigation. Because the Statute requires that a demand letter such as this be sent prior to initiating suit on behalf of the Consumer Plaintiff, I am writing to offer you the opportunity to present my client within thirty days of receipt, with a prompt, fair and equitable settlement offer.

Kindly contact me upon your review of the enclosed so that we may discuss the disposition of this matter.

Very truly yours,

THE LAW OFFICES OF BARRY FEINSTEIN & AFFILIATES, P.C.

Barry A. Feinstein, Esquire

BAF/nb Certified Mail #7009 1410 0000 1854 2882 Enclosures

StateMent Ole Brown 1792 Documer St 1996 c. 358, § 5 3/31/2015	IL 11 FIIEU 05/07/15 Page II	rict Court Department
PLAINTIFF(S)	DEFENDANT(S)	
Susan Marciano	American Red Cross, John I Managment, Inc.	oe and Sedgwick Claims
INSTRUCTIONS: THE FORMMUST BE COMPLETED AND THE WIND OR OTHER MITTAL PLEADING IN ALL DISTRUCTIONS SECRING MONEY PAMAGES IN BARNETABLE BERKSHIRE: BRISTOL, DUKES, ESSEX FRANKLIN, HAMPOE HAMPSHIRE MIDDLESEX NANHUCKET AND NORFOLK COUNTIES.	564 C	DISTRICT COURT
TORT CLAIMS		AMOUNT
A. Documented medical expenses to date:		
Total hospital expenses:		\$ 7,208.00
2. Total doctor expenses:		\$. <u>525.00</u>
3. Total chiropractic expenses:		\$
4. Total physical therapy expenses:		\$
5. Total other expenses (Describe): Beverly Radiolo	ogy	\$ 217.00
7	SUBTOTAL:	\$
8. Documented lost wages and compensation to date:		\$
C. Documented property damages to date:		\$
D. Reasonably anticipated future medical and hospital expenses: .	y 4,0,+++++++++++++++++++++++++++++++++++	s
E. Reasonably anticipated lost wages: .,	.,,,	\$
F. Other documented items of damage (Describe):		\$
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3. Brief description of Plaintiff's injury, including nature and extent of	injury (Describe):	
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ORNEY FOR PLAINTIFF (OR PROSEPLAINTIFF):	DEFENDANT'S NAME AND ADDRESS:	
3/31/2015	American Red Cross, 99 Ro	sewood Drive
gnature Date 161620	Danvers, MA. Sedgwick Cla	
int or Type Name B.B.O.#	P.O. Box 14491, Lexington	*8
O LowelliStreet, Peabody, MA 01960	1.V. DOA 14471, DEATHSTON	,, 21 70312

#### **COMMONWEALTH OF MASSACHUSETTS**

PEABODY DISTRICT COURT CIVIL ACTION NO.:

SUSAN MARCIANO

**Plaintiff** 

٧.

AMERICAN RED CROSS, JOHN DOE and SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. Defendants

### CERTIFICATION OF COMPLIANCE WITH RULE 5 OF THE UNIFORM RULES ON DISPUTE RESOLUTION

I, Barry A. Feinstein, attorney for the Plaintiff, Susan Marciano in accordance with Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) which states in part:

...Attorneys shall: provide their clients with this information about courtconnected dispute resolution services; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent.

I hereby certify that I have complied with this requirement by notifying my client(s) and the insurer of the options for alternate dispute resolution.

Barry Feinstein (BBO #16(620)

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THE LAW OFFICES OF BARRY FEINSTEIN & AFFILIATES, P.C. 100 LOWELL STREET P.O. BOX 6049 SABODY, MA 01961-6049

(978) 531-7450

#### Commonwealth of Massachusetts Peabody District Court

1 Lowell Street Peabody, MA 01960 (978) 532-3100

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Susan Marciano

PLAINTIFF(S),

CIVIL No. 1586CV0102

٧.

SUMMONS

American Red Cross, John Doe and Sedgwick Claims Management, Inc.

DEFENDANT(S)

THIS SUMMONS IS DIRECTED TO American Red Cross, 99 Rosewood Drive, Danvers, MA

- 1. This Notice is to inform you that you are being sued. A Plaintiff has begun a lawsuit against you. A copy of the Plaintiff's Complaint against you is attached and the original has been filed in the District Court. You must respond to this lawsuit in writing. If you do not respond, the Plaintiff may obtain a court order requiring you to pay money.
- 2. You must respond within 20 days to protect your rights. In order to protect your rights you must deliver or mail a written response called an "Answer" to "Clerk's Office for Civil Business, Peabody District Court, 1 Lowell Street, Peabody, MA 01960" and to the individual who filed the Complaint within 20 days from the date on which you received this Summons, or within 20 days of the date on which the Summons was delivered to you,

whichever is earlier. The individual who filed this lawsuit is Barry Feinstein

(name of Plaintiff's attorney or pro se Plaintiff)

with an address at 100 Lowell Street, Peabody, MA 01960

- 3. Your Answer must respond to each claim made by the Plaintiff. Your Answer is your written response to the statements made by the Plaintiff in the Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. You may agree with some of the things the Plaintiff says and disagree with other things. You may also say that you do not know whether one (or more) of the statements made in the Plaintiff's Complaint is true. Even if you agree that you owe what is claimed, sending an Answer will provide you with an opportunity to participate and explain your circumstances.
- 4. You must list any reason why you should not have to give the Plaintiff what the Plaintiff asks for. If you have any reasons why the Plaintiff should not get what the Plaintiff asks for in the Complaint, you must write those reasons (or "defenses") in your Answer.
- 5. You will likely lose this case if you do not send an Answer to the Court and the Plaintiff. If you do not mail or deliver the Answer within 20 days, you will likely lose this case. You will have no opportunity to tell your side of the story, and the Court may order that the Plaintiff receive everything requested in the Complaint. The Court may order that the Plaintiff

4/0/19

Rev. 2/2015

may take your property and/or wages. If you respond to the Complaint and appear at the hearing, you will get an impartial hearing by a judge. Even if you choose to discuss this matter with the Plaintiff (or the Plaintiff's lawyer), you should still send your Answer within 20 days. Even if you file an Answer, you can still reach an agreement with the Plaintiff.

- 6. Legal Assistance. You may wish to get legal help from a lawyer. If you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case. You may also obtain information at <a href="https://www.mass.gov/courts/selfhelp">www.mass.gov/courts/selfhelp</a>.
- 7. You can also sue the Plaintiff. You may be able to get money or other relief from the Plaintiff. If you believe the Plaintiff owes you money or harmed you in some way related to the subject matter of the Plaintiff's Complaint, you must describe that in your Answer. If you do not include these claims (called "Counterclaims") in your written response, you may lose your ability to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must specifically request a jury trial in your Answer.
- 8. You or your attorney must attend all court hearings. If you send your Answer to the Court and the Plaintiff, you will protect your rights. The Court will send you a notice telling you the date, time, and place of an impartial hearing before a judge. The judge will hear both sides of any arguments and schedule any additional hearings.
- 9. Note: The docket number appearing on the front of this notice must appear on the front of your Answer.

  Witness Hon. James D. Barretto, First Justice on (SEAL)

  Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

(address)

# (for use by person making service) On \_\_\_\_\_\_, 20 \_\_\_\_\_, I served a copy of the within summons, together with a copy of the Complaint in this case, upon the named defendant in the following manner: (signature) (name and title)

RETURN OF SERVICE